IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

OP.No. 2629 of 2003(K)
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PETITIONER:
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E.P.MOHAMMEDALI,
EDIPIDIYAN HOUSE, P.O. ARIPRA,
ANGADIPURAM, MALAPPURAM DISTRICT.

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENTS:
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1. THE DISTRICT COLLECTOR,
MALAPPURAM.

2. THE DEPUTY TRANSPORT COMMISSIONER,
CENTRAL ZONE-I, THRISSUR.

3. THE JOINT R.T.O.,
SUB REGIONAL TRANSPORT OFFICE,
PERINTHALMANNA.

BY G.P. SMT.SMITHA SUKUMARAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 27/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO.4729/2003 IN OP NO.2629/2003

DISMISSED:

27.11.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF LETTER DT.10.2.99 SENT BY PETITIONER.

P2: TRUE COPY OF TELEGRAM SENT BY THE HIRE PURCHASE CO.

P3: TRUE COPY OF DEMAND NOTICE ISSUED BY OFFICE OF R3 DT.7.2.2001.

P4: TRUE COPY OF PETITION DT.30.11.01 SUBMITTED BY PETITIONER.

P5: TRUE COPY OF ORDER DT.18.12.2001 ISSUED BY DISTRICT COLLECTOR.

P6: TRUE COPY OF REPRESENTATION DT.2.1.2002 SUBMITTED BY PETITIONER.

P7: TRUE COPY OF ORDER DT.16.1.2002 ISSUED BY R2.

TRUE COPY

PA TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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O.P. No.2629 of 2003

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Dated this the 27th day of November, 2007.

JUDGMENT

The petitioner is challenging recovery proceedings for recovery of arrears of motor vehicle tax in respect of a contract carriage tempo van bearing registration number KL-8-7594 for the period commencing from 1.4.1999 to 31.3.2001. According to the petitioner, petitioner was in possession and use of the vehicle only for a period of over one year from June 1997 and thereafter the vehicle was returned to the registered owner from whom it was repossessed by the financier for default on 24.12.1998. According to the petitioner, petitioner was never the owner of the vehicle and therefore, recovery against him is impermissible. However, it is conceded that petitioner got possession of the vehicle from the registered owner on condition that petitioner will pay instalments due to the financier. Obviously it is a case of purchase of vehicle by the petitioner, but without change of registration in his name. Even if petitioner had purchased the vehicle, it cannot be subject to tax, if it was repossessed by the financier and the financier had filed G forms claiming exemption. In any case I find the Motor Vehicles Department is absolutely irresponsible or otherwise they

could have seized the vehicle from the custody of the financier and recovered the arrears of tax. Even though Section 3(3) of the Motor Vehicle Taxation Act authorises recovery from registered owner or person in possession and control of the vehicle, still recovery may not be permissible from the petitioner as petitioner has lost possession and control of the vehicle way back in August 1998 itself. In the circumstances, O.P. is allowed quashing the demand against the petitioner for recovery of motor vehicle tax due for any period after 1.4.1999 with direction to the respondents to proceed for recovery primarily by attachment and sale of the vehicle or by proceeding against the registered owner and the financier in accordance with statutory provisions.

C.N.RAMACHANDRAN NAIR
Judge

pms